

VIA U.S. MAIL

December 13, 2004

Mr. Jeff S. Jordan
Supervisory Attorney
Federal Elections Commission
999 E. Street, NW
Washington, DC 20463

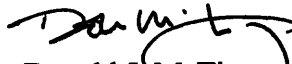
Re: MUR 5604

Dear Mr. Jordan:

Enclosed please find Respondents' Response in the above-captioned matter.

Please do not hesitate to contact me with any questions.

Yours truly yours,


Donald J. McTigue

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OFFICE OF GENERAL
COUNSEL
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**BEFORE THE FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.**

REPUBLICAN NATIONAL COMMITTEE
(RNC)

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) MUR: 5604
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V.

WILLIAM D. MASON
FRIENDS OF WILLIAM D. MASON

**RESPONSE OF RESPONDENTS WILLIAM D. MASON AND FRIENDS OF
WILLIAM D. MASON**

This Response is filed on behalf of William D. Mason and Friends of William D. Mason ("Respondents") in response to a Complaint filed on November 2, 2004. Respondent William D. Mason was a candidate for re-election to the office of Cuyahoga County Prosecuting Attorney in the November 2, 2004 general election.

At issue is campaign literature developed by a consulting firm for Respondent Friends of William D. Mason. Respondent William D. Mason was a candidate for Cuyahoga County Prosecuting Attorney, a non-Federal office, at the November 2, 2004 general election. He faced opposition at the election from the Republican Party's candidate.

Tactical Edge, Ltd., a consulting firm in Columbus, Ohio, was retained to create the campaign literature at issue. Respondent Friends of William D. Mason retained the firm for only one service, namely the design of the campaign literature, for which it was paid \$450. The literature was not mailed to any voters. It was distributed only by hand.

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The literature was designed solely to promote the re-election of William D. Mason as Cuyahoga County, Ohio, Prosecuting Attorney. Since Respondent William D. Mason was running for prosecutor, the literature was created to highlight Mr. Mason's record and positions on law enforcement issues and draw a favorable comparison with that of former prosecutor John Kerry.

Tactical Edge created the literature without consultation, communication, advice or consent of any kind with or from the Kerry-Edwards Campaign, or any agent of the Kerry-Edwards Campaign, any political party or any other political committee. In fact, Respondents do not believe that the Kerry-Edwards Campaign was ever even aware of the literature at issue.

I. Respondents Did Not Make an In-Kind Contribution to a Publicly Funded Candidate as Alleged

A coordinated communication is considered an in-kind contribution to the candidate or party with whom it is coordinated. 11 CFR § 109.21 The "coordination" standard is discussed at 11 CFR § 109.21. There are two elements that must be satisfied in order for a communication to be found to be "coordinated" for purposes of treating such a communication as an in-kind contribution. First, the communication must satisfy one of the content standards enunciated in 11 CFR § 109.21(c). 11 CFR § 109.21(a)(2). Second, and in addition, the communication must satisfy one of the conduct standards enunciated in 11 CFR § 109.21(d). 11 CFR § 109.21(a)(3). Respondents' communication fails to satisfy these requirements and accordingly is not a coordinated communication.

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Respondents' communication was not created, produced, or distributed at the request or suggestion of, or with the assent of, the Kerry-Edwards Campaign or any of its agents. 11 CFR §§ 190.21(d)(1)(i) and (ii). Neither did the Kerry-Edwards Campaign, nor any committee other than Respondent Friends of William Mason had any, let alone material, involvement in decisions regarding any aspect of the communication in question. 11 CFR § 109.21(d)(2). Indeed, Respondents were the only ones with knowledge surrounding the creation and dissemination of the literature. This lack of knowledge by anyone other than Respondents also obviates the content standard articulated in 11 CFR § 109.21(d)(3), namely that substantial discussions took place between the campaigns. Additionally, the vendors employed to produce the literature did no work for the Kerry-Edwards Campaign. 11 CFR § 109.21(d)(4). The firm that created the communication was an independent contractor for Respondent committee only, and was never employed by the Kerry-Edwards Campaign. 11 CFR § 109.21(d)(5). Based on the information above, it is clear that neither the Kerry-Edwards Campaign, nor any of its agents, collaborated with Respondents, nor did they have knowledge of the development, contents or dissemination of Respondents' communication.

II. Respondents are Not a Federal Political Committee and as Such are Not Subject to Reporting Requirements as Alleged

Any organization that makes expenditures aggregating in excess of \$1,000 in a calendar year is a "political committee," 2 U.S.C. § 431(4)(A), and must register and report with the FEC. 2 U.S.C. § 434(a)(4). Friends of William D. Mason does not meet this expenditure threshold as alleged in the Complaint and is therefore not subject to reporting requirements.

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The term "expenditure" includes any purchase, payment, distribution, loan, advance deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(9).

Independent expenditures are funds expended which expressly advocate the election or defeat of a clearly identified candidate that are not made in concert or cooperation or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party or its agents. 2 U.S.C. § 431(17); See 11 C.F.R. 109.1.

"Expressly advocating" means any communication containing a message advocating election or defeat, included but not limited to the several examples listed in the regulations. See 11 C.F.R. § 100.22. Respondents' campaign literature fails to meet this required element of an independent expenditure in that it does not make any communications that fall within the definition of express advocacy as contemplated in the regulations. The campaign communication does not tell the reader for whom to vote or vote against. Accordingly, Respondents' campaign literature fails to come the definition of independent expenditure and thus is also not subject to the Commission's reporting requirements.


III. Respondents Did Not Violate 2 U.S.C. § 441d as Alleged

The Complaint alleges that Respondents failed to meet disclosure requirements set forth in 2 U.S.C. § 441d. The disclosure requirements in question apply when a political committee makes a disbursement for the purpose of financing certain communications. 2 U.S.C § 441d(a).

As noted above, Respondents made no expenditures expressly advocating the election or defeat of a candidate for Federal office. The communication in question does not ask the reader to vote for or against any Federal candidate. Indeed, Respondents' campaign communication does not even ask the reader to vote for Respondent Bill Mason. Accordingly, the disclosure requirements set forth in 2 U.S.C. § 441d are inapplicable.

For the reasons set forth above, Respondents respectfully request that the Complaint filed by the RNC be found not to meet threshold criteria and that MUR 5604 be CLOSED.

Respectfully submitted,


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Counsel for Respondents

**BEFORE THE FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.**

REPUBLICAN NATIONAL COMMITTEE
(RNC)

V.

WILLIAM D. MASON
FRIENDS OF WILLIAM D. MASON

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) MUR No.: 5604
)
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) **AFFIDAVIT**
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I, Jonathan Varner, having been duly sworn and cautioned according to law, hereby state as follows:


1. Respondent William D. Mason was a candidate for Cuyahoga County Prosecuting Attorney at the November 2, 2004 general election. He faced opposition at the election from a Republican Party candidate.
2. I am employed by Tactical Edge, Ltd., a consulting firm in Columbus, Ohio. Respondent Friends of William D. Mason retained the firm for only one service, namely the design of the campaign literature at issue in this matter. My firm was paid \$450 to design the literature.
3. The literature was not mailed to voters. It was only distributed by hand.
4. The literature was a handout designed solely to promote the re-election of William D. Mason as Cuyahoga County, Ohio, Prosecuting Attorney.
5. Since Respondent William D. Mason was running for prosecutor, my intent in creating the piece was to demonstrate his record and positions on law enforcement issues and draw a favorable comparison with that of former prosecutor John Kerry. My intention was only to promote the election of Mr. Mason and I believed that connecting his record to Mr. Kerry's would aid Mr. Mason.
6. Tactical Edge created the literature without consultation, communication, advice or consent of any kind with the Kerry-Edwards Campaign, or any agent of the Kerry-Edwards Campaign, any political party or any other political committee. In fact, I have no knowledge that the Kerry-Edwards Campaign is even aware of the literature.
7. I was never employed by Kerry-Edwards 2004, Inc. in any capacity.

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FURTHER AFFIANT SAYETH NAUGHT


Jonathan Varner

Sworn to and subscribed before me this 13 day of December, 2004.


Notary Public

MARK ALAN MCGINNIS
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03

